

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

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THE UNITED STATES OF AMERICA,	:	2: 22-cr-00139
	:	
	:	February 1, 2024
versus	:	
	:	(Pages 1 - 37)
	:	
FREDRICK WENDELL MCCRAY,	:	
	:	
Defendant.	:	
	:	

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TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE BRUCE HOWE HENDRICKS,
UNITED STATES DISTRICT COURT JUDGE

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A P P E A R A N C E S:

For the Government:	CHRISTOPHER SCOTT LIETZOW U.S. Attorneys Office 151 Meeting Street, Suite 200 Charleston, SC 29401-2238
For the Defendant:	CHRISTOPHER JOHN GRAMICCIONI Kingston Coventry, LLC 825 Lowcountry Blvd., Suite 106 Mount Pleasant, SC 29464
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Proceedings recorded by mechanical stenography,
transcript produced by computer.

1 *(The following proceedings commenced at 1:30 p.m.)*

2 THE COURT: Thank you. Take your seats, please.

3 PROBATION OFFICER: Your Honor, may I approach?

4 THE COURT: Uh-huh.

5 *(Pause.)*

6 THE COURT: Yes, sir, Mr. U.S. Attorney.

7 MR. LIETZOW: Thank you, your Honor.

8 This is United States of America vs. Frederick
9 McCray. It's Case No. 2: 22-cr-139-1. Mr. McCray is
10 represented by Mr. Christopher Grammiccioni. And we are
11 before your Honor for purposes of a sentencing hearing.

12 THE COURT: Okay. Thank you.

13 All right. Let's go ahead and swear in Mr. McCray.

14 DEPUTY CLERK: Yes, ma'am.

15 If you'll please stand, sir.

16 *(Defendant sworn.)*

17 THE COURT: Okay. Good afternoon, Mr. Grammiccioni.

18 MR. GRAMMICCIONI: Good afternoon, your Honor. Nice
19 to see you again.

20 THE COURT: Nice to see you too.

21 Have you gone over the presentence report with Mr.
22 McCray?

23 MR. GRAMMICCIONI: Yes, ma'am.

24 THE COURT: And are y'all ready to proceed?

25 MR. GRAMMICCIONI: Yes, ma'am.

1 THE COURT: Mr. McCray, you've read your presentence
2 report?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Gone over it with your lawyer?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: And do you understand it?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: All right then. And are there
9 objections, Mr. Grammiccioni?

10 MR. GRAMMICCIONI: Your Honor, the only objection we
11 lodged was not so much a factual one; it's really based on the
12 aggravating role adjustment that was assigned by probation. I
13 think it was a plus four. And Mr. McCray and myself submit
14 that, under the legal standards set forth in the United States
15 Sentencing Guidelines, and also the facts set forth in the
16 PSR, it's more indicative of a plus two.

17 THE COURT: Okay.

18 MR. GRAMMICCIONI: I'd be happy to argue that point
19 at this point, your Honor, if you'd like.

20 THE COURT: Yeah. Why don't you go ahead and do
21 that. Mr. McCray can sit down if he'd like.

22 MR. LIETZOW: May I interject real quick to save some
23 time?

24 THE COURT: You can interject any time you want.

25 MR. LIETZOW: Okay. Thank you, your Honor.

1 I think for purposes of just being more efficient,
2 the government is going to concede that point, that, rather
3 than having a four-point enhancement for a leadership role,
4 the government is going to concede that a two-point
5 enhancement for a manager role is appropriate in this case.
6 The reason we are doing that, your Honor, is primarily because
7 if Mr. McCray were assessed a four-point enhancement, his
8 total offense level would be a 39; if he were to be assessed a
9 two-point enhancement, that would reduce his total offense
10 level to 37. That would not change the guidelines at all,
11 whether it was a 37 or a 39.

12 THE COURT: So, y'all agree then?

13 MR. LIETZOW: Yes, ma'am, we agree that a two-point
14 enhancement is appropriate for this hearing. And it doesn't
15 change the guidelines.

16 THE COURT: So, in terms of the record, do you then
17 withdraw your objection or?

18 MR. GRAMMICCIONI: Yes, your Honor. I didn't want to
19 speak for the government. It was my understanding that they
20 were going to concur with that. So, yes, ma'am, I do.

21 THE COURT: Okay. All right then. And so, then I
22 would ask Madam U.S. Probation Officer -- how many officers do
23 we have down there? We have two -- to --

24 Ms. Platt, I believe you're the one on this case,
25 correct?

1 PROBATION OFFICER: That is correct.

2 THE COURT: -- to put the statutory provisions and
3 guideline provisions on the record, in light of the consent
4 between the parties on that objection.

5 MR. LIETZOW: Your Honor, there was one other point I
6 think that United States Probation would like us to make prior
7 to putting that information on the record.

8 THE COURT: Sure. Okay.

9 MR. LIETZOW: I believe it was January 10th, if
10 memory is serving correctly, that I submitted a letter to
11 your Honor's chambers in regard to Mr. McCray's status as an
12 armed career criminal. We submitted a letter that summarized
13 the Department of Justice's position, which is that Mr. McCray
14 should not be classified as an armed career criminal. The
15 Department of Justice's position is that, because the three
16 prior qualifying convictions were not specifically alleged in
17 the indictment, nor did Mr. McCray make an affirmative
18 admission on the record at his plea hearing, that he would not
19 qualify as an armed career criminal.

20 I would like to point out, though, that there is case
21 law that contradicts the Department of Justice's position;
22 however, nonetheless, that is the Department of Justice's
23 position, and we would ask your Honor to not find that Mr.
24 McCray qualifies under the Armed Career Criminal Act. That
25 would have qualified Mr. McCray for a mandatory minimum

1 sentence of 20 years, which would have been the 15 years on
2 the 922(g) under the armed career criminal, plus the five
3 years consecutive for the 924(c). If Mr. McCray is not ruled
4 as an armed career criminal, his mandatory minimum becomes 15
5 years, which would be the 10-year mandatory minimum for the
6 drug offense, plus the five consecutive years for the 924(c).

7 THE COURT: Okay. Yes, sir.

8 MR. GRAMMICCIONI: That's correct, your Honor. And
9 as it pertains to the guidelines, again, we did withdraw the
10 objections that were lodged by earlier counsel, recognizing
11 that, while there were certain disputes, we recognize that the
12 government would have met its burden. So, I don't believe the
13 guidelines are an issue for the Court today.

14 I will observe the following. While it appears
15 career offender applies under the finalized PSR, I am going to
16 be arguing, as part of my 3553 *Booker* variance argument, that
17 the Court disregard the career offender designation then.

18 THE COURT: Okay. All right. That makes all -- I
19 hear you.

20 And now I'd ask probation to put the statutory
21 guideline provisions on the record.

22 I accept the government's request not to sentence him
23 as an armed career offender.

24 PROBATION OFFICER: The statutory provisions are as
25 follows: Custody for Count 1 is 10 years to life. Count 2 is

1 five years to 40 years. Count 3 is five years, consecutive to
2 all other counts. Count 4 is 10 years. Counts 16, 17, 18,
3 20, 21, 22, 23, 24, and 26 is zero to four years. Supervised
4 release for Count 1 is five years to life; Count 2, four years
5 to life; Count 3, zero years to five years; Count 4, zero
6 years to three years; Counts 16, 17, 18, 20, 21, 22, 23, 24
7 and 26 is zero to one year. Probation is ineligible. Fine as
8 to Count 1 is \$10 million; Count 2 is \$5 million; Count 3 is
9 \$250,000; Count 4 is \$250,000; Counts 16, 17, 18, 20, 21, 22,
10 23, 24 and 26 is \$250,000. Special assessment is \$100 for
11 Counts 1, 2, 3, 4, 16, 17, 18, 20, 21, 22, 23, 24, and 26.

12 The guideline provisions are as follows: Total
13 offense level is 37. Criminal history category is six.
14 Probation is ineligible. 360 months to life imprisonment as
15 to Counts 1, 2, 4, 16, 17, 18, 20, 21, 22, 23, 24, and 26;
16 five years as to Count 3, consecutive to all other counts'
17 imprisonment. Supervised release is five years for Counts 1;
18 four to five years for Count 2; two to five years for Count 3;
19 one to three years for Count 4; and one year for Counts 16,
20 17, 18, 20, 21, 22, 23, 24, and 26. The fine has not been
21 calculated. No restitution in this case. And \$1,300 special
22 assessment fee for Counts 1, 2, 3, 4, 16, 17, 18, 20, 21, 22,
23 23, 24, and 26.

24 THE COURT: Thank you, ma'am.

25 All right. I'm happy to hear from the government in

1 regards to the 3553(a) factors.

2 MR. LIETZOW: Thank you, your Honor. And may it
3 please the Court. Just on the front end, the government is
4 seeking a guideline sentence in this case. And going through
5 the nature and the circumstances of the offense, your Honor,
6 Mr. McCray is the leader of a violent criminal street gang
7 that's associated with a national level gang, known as The
8 Rolling 20s Crips. Locally, that gang is referred to as "YSP"
9 or "Young Solid and Paid." In addition to the violence, this
10 criminal organization functions as a drug-trafficking
11 organization. And the government's position is that Mr.
12 McCray is the leader of that organization and is the main
13 source of supply for crack cocaine within that organization.

14 I'll refer your Honor to paragraph 37 of the PSR,
15 which indicates that McCray's organization is primarily
16 responsible for gang-related violence and drug-territory
17 murders. They have flooded the streets of Charleston with
18 drugs and they sent deadly weapons into various neighborhoods.
19 Your Honor, Mr. McCray's organization essentially overran the
20 Ten Mile community in North Charleston with crime and utilized
21 the community center as one of its primary drug distribution
22 locations. Mr. McCray was responsible for brokering deals,
23 distributing drugs, directing other members of the
24 organization to distribute drugs, and Mr. McCray was also
25 responsible with providing them with dangerous automatic

1 weapons that was done for the purposes of protecting the gang,
2 protecting the gang's turf, and protecting the gang's
3 inventory.

4 Your Honor, as far as the drugs are concerned, Mr.
5 McCray primarily received powder cocaine from his
6 co-defendant, Tyrone Cox, which your Honor has already
7 sentenced earlier to a 25-year prison sentence. Mr. McCray
8 would then take the powdered cocaine that he received from Mr.
9 Cox and he would cook it into crack cocaine. And then Mr.
10 McCray was the main source of supply for distributing that
11 crack cocaine to other -- other drug dealers. And Mr. McCray
12 also had his own clientele base that he dealt with.

13 Mr. McCray had members of his gang -- such as Terrell
14 Myers, Cornelius Walker, Kevin Dukes, Kenneth Brown, Kendrick
15 Smalls, Earl Allen, and other indicted and non-indicted
16 coconspirators -- would receive crack cocaine from Mr. McCray
17 and then distribute it to various members within the
18 community. And part of this was done for the purposes of
19 insulating Mr. McCray from criminal liability. By having
20 underlings and younger members of the organization distribute
21 his drugs, he would insulate himself, to a certain degree,
22 from detection from law enforcement. Mr. McCray maintained a
23 trap house with the gang, which was located as 5851 Long Leaf
24 in the Ten Mile community. McCray and other members would use
25 this location to meet and sell drugs. And additionally, Mr.

1 McCray also had an apartment, where he would manufacture his
2 crack cocaine. Federal law enforcement installed pole cams in
3 this area, and the pole cams revealed that Mr. McCray would go
4 to the 5851 Long Leaf location, almost on a daily basis, where
5 he would sell to his clientele, he would supply young members
6 of the gang, and he would then also meet with his suppliers.

7 What distinguishes Mr. McCray from Mr. Cox and other
8 members of the criminal organization is the level of violence
9 that was involved in this case. The YSP gang was rivals with
10 a gang known as "West Cash," which primarily operated out of
11 the West Ashley area. And law enforcement would be able to
12 attribute at least a dozen murders that were associated with
13 YSP, where either they were the aggressor or one of their
14 members was murdered as a victim as part of this gang violence
15 that was occurring between these two rival gangs.

16 Additionally, there were also dozens of shootings that were a
17 result of these two gangs and other violence that did not
18 result in homicides, but, nonetheless, did involve firearms.

19 To just draw down specifically on the violence,
20 your Honor, I'd like to turn your attention to a wire call,
21 which is Session 9914. In this call, Mr. McCray and one of
22 his indicted coconspirators, Terrell Myers, are having a
23 conversation about some of the younger members that act as
24 enforcers in their drug organization. And Mr. McCray says,
25 quote: "I tell them boys straight up, hey, my N-word, them

1 little boys not scared of y'all or nothing now. Them little
2 boys ready to fire y'all up."

3 Myers then says: "Yeah, you better tell them Ns,
4 you're going to shoot in the face now. If you ain't want no
5 F-ing problem, you better get your money and keep it moving."

6 Then on wire call, Session 2579, Mr. McCray says:
7 "If you cross our path, we ready for war any time it presents
8 itself. But we ain't coming to look for it. We ain't
9 chasing, but when it comes, we're going to dominate that
10 mother-F-er. So, if y'all come cross that line, I'm going to
11 lay your ass facedown, ass up. Everybody got to go
12 through one eye opener. My one eye opener is when I shoot in
13 the mall. I don't give an F where I see you, in front of the
14 courthouse, I'm going to fire your ass up. That's my
15 definition of on sight." Specifically, Mr. McCray is
16 referring to a shooting that he was involved with at the
17 Northwoods Mall on July 3rd of 2017, where Mr. McCray was
18 involved in shooting at an individual inside of the mall.
19 That prosecution did not go anywhere as a result of the victim
20 and the witnesses refusing to cooperate with law enforcement.

21 So, with the violence, I know your Honor is familiar
22 that this case involved these devices that are known as
23 "switches." Switches are items that can be manufactured with
24 3D printers and oftentimes come from China and other
25 locations, which are installed on the back of glock

1 semiautomatic handguns. And those switches then convert that
2 semiautomatic handgun into a fully automatic handgun, which is
3 capable of shooting multiple rounds simultaneously with a
4 single trigger pull. Mr. McCray is responsible for acquiring
5 10 switches for members of his gang. And there were multiple
6 members of this gang that were arrested in possession of those
7 switches. Particularly, Cornelius Walker was arrested with a
8 glock that had a switch on it, and one ounce of marijuana.
9 Kendrick Smalls was arrested on a Charleston Police Department
10 attempted murder warrant. And when he was arrested, his glock
11 had a switch on it. And Santerio Smith, another unindicted
12 individual in this organization, was arrested by North
13 Charleston Police Department, following a vehicle pursuit that
14 resulted in multiple vehicle collisions, where he had a glock
15 that had a switch on it inside of his vehicle.

16 Mr. McCray mentioned these switches on two jail calls
17 -- I'm sorry, two wire calls in particular. Session 5574, Mr.
18 McCray is speaking with an unindicted member of his
19 organization, and Mr. McCray says, quote: "Man, we find the
20 switches. Dog want \$350. Dog got 10 of them. Boy, I said
21 tell them we want all. I got to get one of them. Dog got 10.
22 I'm getting me one of them switches. I don't even got a
23 glock."

24 Then the very next day on Session 5713, Mr. McCray is
25 speaking with Williams and says, quote: "I just get me a full

1 nickel with a switch yesterday. Dog sell us 10 switches
2 yesterday. We got 10 of them shits for \$350 a piece. I buy a
3 glock. I got mine in the 45. John been telling me about the
4 switches and the guns, so I bought all them shits. I spent
5 like four bands. I said: N-word, let me tell you something
6 right quick, I ain't squared of shit, boy. That's a sign of
7 buying what we want; if I don't buy it, somebody else is gonna
8 be against us." So, in that call, Mr. McCray is essentially
9 purchasing all of the switches that this particular supplier
10 has for the primary purpose of arming his gang with those
11 switches, but also to prevent any rival gangs from having the
12 switches that could potentially be used against his gang.

13 So, your Honor, in addition to the drugs and the
14 violence and the switches, there was also a high degree of
15 cooperator intimidation that occurred in this case. I'm
16 referring your Honor to paragraph 34(c) of the PSR, which
17 talks about a situation where there was group of co-defendants
18 that were gathered in a room during a pretrial conference, and
19 at that time, Mr. McCray addressed the entire room and stated,
20 quote: "If they plan on telling on me, I'm going to take it
21 to trial and let the whole world know that you're a rat and
22 telling on me." Mr. McCray then passed a piece of paper
23 around to the members that were present and gestured toward a
24 particular individual who was also present so that the group
25 knew that that particular individual was cooperating with law

1 enforcement. And then during another hearing, your Honor, Mr.
2 McCray told the co-defendants in his case that, quote: "Ain't
3 nobody going to talk on me and live to talk about it."

4 So, as your Honor can see, the nature and the
5 circumstances of this offense are extraordinarily serious. We
6 have an individual who's the leader of a criminal organization
7 that not only is flooding the Charleston area, and
8 particularly the Ten Mile community of North Charleston, with
9 all manners of drugs, including crack cocaine, but we also
10 have a criminal organization that is willing to resort to
11 extreme violence and going as far as committing murders in
12 order to uphold the reputation of the gang, but also protect
13 the gang's turf and protect the gang's inventory. And when
14 they do this, they then arm their weapons with devices that
15 convert them to fully automatic, which, when multiple rounds
16 are shot simultaneously, it just exponentially increases the
17 risk of an innocent bystander getting struck. So, it shows a
18 complete disregard for the sanctity of life and anybody else
19 that may be caught up in this nonsense and violence that
20 occurred between Mr. McCray's gang and all the other criminal
21 organizations.

22 As far as deterring criminal conduct, your Honor,
23 unfortunately, Mr. McCray has never been held seriously
24 accountable for any of his criminal acts until now. And one
25 of the MOs associated with Mr. McCray is, when he is arrested

1 and charged at the state level, as I mentioned earlier,
2 witnesses and victims have a tendency of refusing to
3 cooperate, which serves as a hindrance to holding Mr. McCray
4 responsible. Thankfully, in this case, federal law
5 enforcement was aware of this situation and was prepared to
6 handle it and prepared to deal with it and move quickly to
7 prevent that from taking place. And so, we do think that a
8 strong federal sentence in this case will serve as a deterrent
9 to Mr. McCray specifically, but will also serve as a deterrent
10 to the community at large and send the message that: Dealing
11 drugs, and the associated violence that goes with the dealing
12 drugs, is not going to be tolerated, and anybody that may want
13 to follow in Mr. McCray's footsteps will also be held
14 extremely responsible if they engage in similar conduct.

15 Protecting the public from further crimes of the
16 defendant, your Honor; your Honor has Mr. McCray's criminal
17 history, which is rather lengthy. Mr. McCray has been dealing
18 drugs and committing acts of violence his entire life. And,
19 your Honor, the government's position is that the only thing
20 that will protect the community from Mr. McCray's future
21 criminal acts is a lengthy period of incarceration.

22 Mr. McCray's criminal history is extensive and it
23 dates back to the 1993, starting when he was 12 years old.
24 Just some of the highlights, your Honor: In 1996, Mr. McCray
25 was convicted of distribution of cocaine. The next year, in

1 1997, he was convicted of distributing cocaine near a school.
2 In 2000, he was convicted of assault and battery of a high and
3 aggravated nature. In 2001, he was convicted of shooting
4 crack in proximity of a school. In 2002, he was convicted of
5 filing a false police report; 2023, giving false information,
6 distribution of cocaine and distribution of cocaine near a
7 school. In 2004, he was convicted of assault and battery. In
8 2008, he was convicted of possession with intent to distribute
9 cocaine and distribution of cocaine near a school. In
10 addition, your Honor, Mr. McCray was arrested for a murder in
11 2000. And Mr. McCray was arrested for several drug and
12 gun-related offenses in 2017, 2019, 2020 and 2021. And as I
13 touched on earlier, a lot of those victims and witnesses would
14 refuse to cooperate, which would cause issues with the state
15 prosecution.

16 Your Honor, if I can distinguish Mr. McCray from the
17 other members of this criminal organization, our position is
18 that Mr. McCray is the number-one individual in this criminal
19 enterprise. We presented testimony in evidence to your Honor
20 that Mr. Cox was the number-two individual. And we believe
21 that Mr. McCray is above Mr. Cox as far as criminal
22 culpability goes. And the main thing that distinguishes Mr.
23 McCray from Mr. Cox is the level of violence.

24 As your Honor heard during Mr. Cox's sentencing
25 hearing, Mr. Cox didn't have the convictions on his record

1 that dealt with violence that Mr. McCray has. Mr. Cox also
2 didn't have the evidence on the record for providing switches
3 to gang members. And Mr. McCray was not the primary source of
4 supply for cocaine, like Mr. Cox was, but Mr. McCray would
5 then take that cocaine and convert it into crack cocaine. And
6 Mr. McCray was the primary source of distribution of crack
7 cocaine in this area. So, we would say, for all those
8 reasons, Mr. McCray is distinguished from Mr. Cox and is above
9 Mr. Cox in the criminal culpability because of the extreme
10 violence that Mr. McCray is associated with.

11 So, in conclusion, your Honor, Mr. McCray is a
12 life-long drug dealer that organized and led a criminal street
13 gang that destroyed a community through narcotics trafficking
14 and acts of gang-related violence. And we firmly believe that
15 there is nothing in the PSR or no evidence that could be
16 presented that would warrant anything less than a guideline
17 sentence in this case. And we would respectfully ask
18 your Honor to sentence Mr. McCray within the guidelines that
19 have been established by the United States Probation Office.
20 Thank you.

21 THE COURT: Okay. Thank you.

22 Yes, sir.

23 MR. GRAMMICCIONI: Thank you, your Honor.

24 With respect to my colleague for the government,
25 about 80 percent of that argument was based on matters that

1 haven't been charged here. I realize what the relevant
2 conduct statute says under the sentencing guidelines and, of
3 course, I recognize, as does my client, Mr. McCray, the
4 criminal history that he's had the unfortunate history of.
5 But at the end of the day, your Honor, I'd just invite the
6 Court back to the counts to which he's pleaded guilty:
7 Conspiracy to distribute narcotics, possession with intent to
8 distribute, possession of a firearm, and a number of unlawful
9 use of a communication facility.

10 Now, Mr. McCray is not running from his acceptance of
11 responsibility, nor his unfortunate history. And I'm going to
12 explain what the PSR, I think, doesn't ring true on behalf of
13 Mr. McCray and his difficult and challenging family
14 circumstances in a moment. But I'd like to point out that it
15 is completely an unfair characterization to try to basically
16 pin 12 murders in the community on Mr. McCray. The one murder
17 that was referenced was dismissed. I mean, it says it right
18 inside the PSR. So, while I appreciate that the Court can
19 give consideration to these things, I would respectfully
20 request that you give limited weight to that. There's a
21 picture that's been painted here, and I'm not sure you can
22 glean what the government wants you to glean, based on what's
23 been agreed upon in the PSR, so I'll go into that a bit.

24 But I want to start off by telling the Court that Mr.
25 McCray is substantially more than the worst thing he has ever

1 done. And, admittedly, there's a number of things that he
2 regrets in his life. He's more than the person that conspired
3 to sell narcotics, that committed the 924(c) here. He is a
4 44-year-old man who's been happily married for almost a decade
5 -- or, excuse me, 12 years, a loving father of two, and a
6 grandfather as well. And I'll get to the number of family
7 members that are here supporting him behind me, your Honor, in
8 the third and fourth row, as indicative of that love and
9 affection that his family has towards him and vice versa.

10 Now, the question before the Court is one that I know
11 the Court's, in every sentencing, thought about: What is
12 necessary? What is necessary to properly punish this man?
13 That's what 3553 calls for. I'm not going to sit here and
14 presume to tell the Court the legal standards on sentencing;
15 you know them better than anybody in this courtroom, your
16 Honor. But I would submit to you that to accomplish the goals
17 of sentencing under 3553, a minimum -- a mandatory minimum
18 sentence of 15 years but no more than 20 is sufficient. It's
19 not greater than necessary, but it's perfectly sufficient
20 here. He's 44-year-old man that, if the Court awarded the
21 15-year minimum, he'd be released around 59 years old.

22 Now, I submitted a lengthy sentencing memorandum,
23 which I know the Court is aware of and has reviewed. I cited
24 extensive information about how incarceration doesn't move the
25 needle, like the government would invite the Court to believe

1 it does. It doesn't. In fact, what it does is for every year
2 in the study that I cited -- for every year of incarceration
3 that a defendant sits in jail, it takes effectively two years
4 off of their life. That's a pretty damning thing for somebody
5 who's 44 years old and expected to get out in his 60s.

6 I also cited to information that the United States
7 Sentencing Commission even has recognized for the last 10
8 years, which is that people who are older tend not to
9 recidivate. And, look, again, I'm not running from the
10 criminal history that Mr. McCray has -- and I'll get to that
11 in a moment -- but it's an important fact here. With age
12 comes wisdom. This is a serious offense, which Mr. McCray has
13 recognized, that he's pleaded guilty for and accepted
14 responsibility. He wants to try to return -- become a
15 productive member of society and return to being a role, an
16 active and proactive present person in his family's life.

17 As demonstrated in the PSR, I'd ask the Court to take
18 a look at his family and personal characteristics. He's
19 grappled with financial and familial instabilities since his
20 juvenile years. After dropping out of school at 14, he sadly
21 fell into a life of narcotics, which is not a song that I know
22 this Court hasn't heard before, particularly in the
23 African-American communities, where there is less opportunity
24 to financially be able to support your family. I will also
25 note that these crimes were committed right around the time

1 that the pandemic struck this area and, of course, the entire
2 United States, and financial instability was made even worse
3 for somebody like Mr. McCray. And he wants to support his
4 family. Again, that's not a justification for committing a
5 crime, but it's something that I think the Court should
6 recognize. He fell into this life of narcotics and abuse as a
7 young child and, unfortunately, he fell into that cycle of
8 narcotics abuse by daily using Percocet and cannabis. But
9 these struggles notwithstanding, he continued to prioritize
10 his family life. And as an adult, he launched his own lawn
11 care business to support his family. He has been described by
12 his family, who knows him best, as an easygoing person with a
13 big heart.

14 I'm going to go through some of the 3553(a) factors
15 that I would respectfully disagree with my government
16 counterpart's conclusions on, in support of the sentence that
17 I think is sufficient but not greater than necessary, and
18 that's a minimum of 15 but no more than 20 years in prison for
19 Mr. McCray. Mr. McCray's nephew, in a letter that I submitted
20 as part of our sentencing cases, described Mr. McCray's life
21 as one marked by financial hardship and the looming threat of
22 homelessness. He had a hard life, but still worked really
23 hard to be a good father, husband, and to remain employed. As
24 I mentioned, the world changed in 2020. And a lot of his
25 criminal conduct that was committed in the charged offenses

1 here -- again, it's not an excuse for it, but it's something
2 that I think is mitigating. He needed to be able to support
3 his family. And while nobody should think of a life of
4 illegal activity in doing so, at the end of the day, he needed
5 to put food on the table for his loved ones. He had no
6 meaningful choice but to engage in this to make ends meet.

7 On page six of my sentencing memo, I referenced that
8 lengthy jail sentences don't work as it is. Again, that's not
9 to say that a jail sentence is appropriate. But I think the
10 one that we're recommending is sufficient but not greater than
11 necessary to accomplish the sentencing goals.

12 I also would like to note Mr. McCray has been in jail
13 for nearly two years already. So, the minimum requested
14 sentence would be an additional 13 that he would be away from
15 his family. He would carry the stigma of a federal felony
16 conviction. His employment prospects, just based on his age
17 by the time he's released, are already curtailed. So, I would
18 submit that the Court don't make it anymore difficult for him
19 to return and become a productive member of society. The
20 older he is when he's released, the harder it will be for him
21 to be able to gain employment to support his family and
22 himself. In terms of rehabilitative capabilities, Mr. McCray
23 has indicated, as set forth in the PSR, that he wants to
24 return for the love of his family and to begin working in the
25 lawn care business again.

1 And, your Honor, you've probably heard this before
2 from defense attorneys: The concept of mercy. The concept of
3 mercy has been around since the Roman era times. In fact,
4 people used to carry around coins that could be presented when
5 mercy was necessitated by a magistrate or somebody in a
6 position of determining someone's guilt or innocence and
7 punishment. We don't have a coin to give you, your Honor, but
8 we have my argument, we have Mr. McCray's loving and
9 supportive family, some of which, if the Court's willing,
10 would like to address the Court. And then, of course, you'll
11 hear from Mr. McCray himself.

12 I mentioned in the beginning of the proceeding that
13 the career offender under the guidelines appears to be
14 applicable. But I would ask the Court to disregard this
15 designation, as a majority of judges across the country have,
16 for years, recognized and appreciated what the commission
17 itself concluded as far back as 2004, that sentences dictated
18 by career offender guidelines are the most severe and least
19 likely to promote sentencing purposes. In fact, since *Booker*,
20 career offender guideline sentences have decreased from
21 44 percent in 2005, to 27 percent in 2014. And by the time
22 2021 rolled around, according to the commission's own
23 statistics, not even 20 percent of judges were imposing
24 career-offender sentences. And unfortunately, the disparity
25 is even worse for African-American male defendants. Of the

1 1,216 career offender guideline cases in 2020, 97 percent were
2 men and 61 percent were African American. That same Quick
3 Facts 2020 study from the commission noted that 53 percent of
4 individuals exposed to career offender guidelines received a
5 *Booker* variance below that guideline range.

6 Your Honor, again, Mr. McCray is looking forward to
7 the opportunity to explain to you why he will become a
8 productive member of society, why mercy is appropriate here.
9 But before getting to that, if the Court's willing to allow
10 it, a few members of his family would like to briefly address
11 the Court. I'd like to recognize the following who are here
12 to support. His mother, Debra Shuler; his brother, Laron
13 McCray; his sister, Dayomia McCray; his sister-in-law, Katrina
14 Ravenel; his -- what's been characterized as his second mom,
15 because he's so close with this lady: Alethia Robinson; and
16 cousin, Lavell Harris; as well Khalil Gore, his nephew.

17 And, your Honor, if Ms. Shuler could speak on her
18 son's behalf, I'd appreciate the opportunity.

19 THE COURT: Sure. It's probably better to come up to
20 the podium.

21 MS. SHULER: How you doing, your Honor?

22 THE COURT: Good. Thank you.

23 THE WITNESS: My name is Debra Shuler, and I'm Fred
24 McCray's mother. And I'm just here on his behalf. I don't
25 condone nothing that happened. I'm here on his behalf because

1 he did have a very hard life. I got married at 17 years old,
2 and my husband left within, like, four years. And I was left
3 to raise my four little kids. And I did -- I feel like I did
4 a very good job. I worked hard to do two jobs. And my kids
5 remembering -- I guess Fred's remembering when we were hungry,
6 homeless, a lot of times -- I'm so sorry. A lot of times we
7 didn't have no place to sleep. We had strangers that -- and
8 he always looked me in the eye, a four-year-old kid,
9 five-year-old kid, saying: Mom, you're going to be okay.
10 It's going to be okay.

11 But, I mean, I don't condone nothing that's, you
12 know, out in the street to hurt anyone, but I know my child is
13 a very good child. He's a good child at heart. I know that
14 he cares about people. And I prayed a lot and I talked to him
15 a lot. And, you know, I let him know that wasn't the way to
16 go, because I worked two and three jobs just to -- my kids
17 never lacked for nothing. After my husband left and I had to
18 take care of them, they never lacked, because I worked two and
19 three jobs. But my son felt like: Mom, I love you. He never
20 -- and he can ask you. I never take a dime from him, because,
21 you know, I don't condone things wrong out in the street.

22 But I just want y'all to know he's a very good
23 person. And I know the law is the law and he shouldn't have
24 done -- but I've spoke to him. And he has four kids now. And
25 he has a two-year-old that he's never seen, because he was

1 incarcerated, and he has a 16-year-old that's in high school
2 that loves him very much. I think he might have spent like
3 three or four years with him. And he also has one in college,
4 and then also an older son. And a lot of the things that I
5 hear them say, I know my child never murdered anybody or
6 anything. Never. And he's never been convicted of a murder.
7 So, I mean, I hear things but I know that that's not true.
8 He's never been convicted for murder.

9 But I'm just wanting your Honor to please give mercy
10 on him today and try to give him the lightest possible
11 sentence that you could, because I know that he's a good
12 person. I know that he'll come out here and be good in
13 society and will help. I own a T-shirt business. I'm 64
14 years old. So, I'm looking to leave that business for him so
15 he can have something to do with his time and also keep that
16 business going. And so, I'm asking, your Honor, please give
17 some mercy on him, because he's a very good person. He will
18 give you the shirt off his back. And I guess greed got a part
19 of what was going on. And it's not right, but greed got a
20 part; looking at the money, like: I'll be able to help my
21 family, my children and my wife and everybody.

22 But I'm asking you, please, your Honor, please,
23 because he did grow up with a bad life, without a father. And
24 it was hard. I tried my best to raise him, but it was very
25 hard. So, I'm asking y'all to please give some mercy -- the

1 Court to please give some mercy. And I thank y'all so very
2 much for listening to me.

3 THE COURT: Thank you.

4 THE WITNESS: Okay.

5 MR. GRAMMICCIONI: Your Honor, with the Court's
6 permission, we would now call up Laron McCray and Dayomia
7 McCray, Mr. McCray's brother and sister, who will stand at the
8 podium together but will address the Court separately,
9 briefly.

10 THE COURT: Thank you.

11 MR. GRAMMICCIONI: Thank you.

12 DAYOMIA MCCRAY: Hello. I'm Dayomia McCray. I'm the
13 youngest sibling of four. Frederick is like my father, my
14 best friend. Excuse me. He's a loving father of four, which
15 he has a one-year-old daughter that he has not seen in life.
16 I ask that you be very lenient on him. He is a guy with a big
17 heart who got caught up in a fast world. And I do apologize
18 on his behalf. And I just ask that you please have mercy on
19 him as much as possible. Thank you.

20 LARON MCCRAY: How you doing? My name, Laron McCray.
21 Good afternoon to the Court.

22 And with all due respect, Judge, Government, the
23 lawyers, I just want to say: I know everybody have a job and
24 I know what the law is. But what makes me angry sitting here
25 in this court today is when I know what I'm hearing is a lot

1 of falsified things going on. That's my brother right there.
2 I know him. When they mentioned that he's a leader of a gang,
3 when we was growing up -- and now -- we look at gangs as being
4 a joke. So, it's impossible for him to be a leader of a gang.
5 That's impossible. But I know as the government, prosecutors,
6 it's their picture -- it's the duty to paint the most ugliest
7 picture to the Court, to get a conviction. Not to undermine
8 or degrade their job or their investigation, but a lot of
9 things I'm hearing, I know it's falsified. And you highlight
10 the things that's on the wiretaps or whatever, but I know for
11 a fact, Judge, a lot of this stuff is being falsified for a
12 fact.

13 That's my brother's life. I put my life on the line
14 for him. And I'm not going to stand -- I've never done this
15 before in my life. I'm a very shy person. But that's his
16 life we're talking about. That's his life. Anybody that know
17 me in the courtroom, know I'm a quiet person, very quiet, not
18 outspoken at all. But I'll change anything for him. That's a
19 great guy there. Yeah, we had a hard life. Yeah, we did a
20 lot of things growing up in the projects and doing this and
21 doing that without a father. That's hard. And it's hard for
22 some people to even perceive that life, to even interpret it
23 the correct way, because it's hard to fathom if you never came
24 from that environment. But we did that. And we achieved more
25 in our life and family, coming from nothing. Like my mother

1 said, we was homeless a lot of times, with no family. So, I
2 know a lot of y'all are very smart people. You know what that
3 can do to your mental as a young child. It can screw you up.

4 That's all I wanted to say. Just have mercy on my
5 brother's life, because I want to see him again. And I know
6 he's a great guy. I talk to him almost every day. And I hear
7 change in his voice. I can hear it, you know. But y'all have
8 a job to do. Y'all have a lot to uphold. And I respect it.
9 But I also ask you to treat him like a human, not to just end
10 his life right then, because, he never knows when he'll see
11 his mother again, or see his child that he never saw before.
12 We all know a lot of things happen back in there. A lot of
13 people don't make it out.

14 I ask you, Judge, and the Court, just for leniency.
15 And I thank you.

16 DAYOMIA MCCRAY: Thank you.

17 MR. GRAMMICCIONI: Thank you, your Honor.

18 Before I conclude, if the Court would hear from Mr.
19 McCray, he'd like to make a statement to your Honor.

20 THE COURT: Sure, uh-huh.

21 THE DEFENDANT: Your Honor, I take full
22 responsibility for all the charges that I pled guilty for, but
23 I don't take full responsibility for the picture that they're
24 painting against me. The picture they're painting against me,
25 my life ain't nothing like that. But I do take full

1 responsibility for all the charges that I pled guilty to.

2 THE COURT: Okay.

3 MR. GRAMMICCIONI: Your Honor, I'll just briefly
4 conclude. Thank you for that opportunity.

5 I was listening to the government's argument, and it
6 sounded like they were painting this picture of this gang and
7 narcotics conspiracy that sounded like something as
8 sophisticated as La Cosa Nostra, which I know a little bit
9 about when I was a prosecutor in New Jersey. And, your Honor,
10 I know the Court knows that, in many cases, especially in
11 urban areas, it's the furthest from here, right? That's not
12 to say that there is any excuse for affiliating with other
13 people that are involved in narcotics activity people, but
14 there is something to be said for the necessity for
15 protection. That is something that I would ask the Court to
16 consider. There's certainly no justification or excuse in the
17 use of a firearm in facilitating a narcotics conspiracy, but
18 it's an unfortunate reality these days on the streets.

19 I also -- when the government asked for a guideline
20 sentence, just let it sink in for a minute, that if he's 44
21 years now, he'll be getting released at 74 years old. I think
22 that's the furthest thing from the definition of fair, and I'd
23 respectfully submit the sentence that we recommend is more
24 appropriate and is sufficient but not greater than necessary
25 to sentence Mr. McCray.

1 And I'll close with: Even President Lincoln aptly
2 recognized that "mercy bears richer fruits than strict
3 justice." So, I'd just ask the Court, considering Mr.
4 McCray's age, his personal circumstances, his challenging
5 life, his ability to work when he is ultimately released from
6 prison to support his family -- we'd ask that the Court issue
7 the sentence that we've asked for. And I'll answer any
8 questions that the Court may have, but, otherwise, that
9 completes our argument.

10 THE COURT: Okay. I appreciate your thorough
11 presentation and your memorandum. Very well done. Read
12 everything, heard from his family. And that's almost the
13 hardest part of the Court's job in every case. When you
14 sentence a defendant, as his brother said, you sentence a
15 human being, and not only that, you sentence his family. So,
16 it's a heavy responsibility and one that gives the Court great
17 pause every time -- every single time.

18 The Court's going to take a five-minute recess and
19 head back to the jury room for just a minute; okay?

20 MR. GRAMMICCIONI: Your Honor?

21 THE COURT: Uh-huh.

22 MR. GRAMMICCIONI: This was through my own
23 inadvertent error. I gave a copy to the government. There's
24 one additional letter that I neglected to file. It was kind
25 of late breaking because of my mistake. So, I apologize to

1 the parties.

2 THE COURT: All right. You can hand that up.

3 MR. GRAMMICCIONI: Thank you, your Honor.

4 THE COURT: Uh-huh. Thanks.

5 *(Recess.)*

6 THE COURT: Thank you. Take your seats, please.

7 Okay. I've read the submitted-by-hand character
8 letter from Mr. McCray and I have read the sentencing
9 memorandum, filed by his lawyer. I've considered that. I've
10 considered everything he has written in that written
11 memorandum. And I have considered all the points that he has
12 raised at the sentencing. I've considered the remarks of all
13 his family members, which, as I mentioned, is -- in a
14 sentencing, the hardest part is the family, because they're a
15 solid family. They had courage to come in here and continue
16 to express their love and support for their brother. And I
17 appreciate everything they said. I appreciate that they said
18 that -- and I sympathize and have compassion for the fact that
19 he had a really tough upbringing, and his poor mom had to hold
20 down three jobs to take care of them, and that he tried to
21 reassure his mother every step of the way.

22 I appreciate the science that defense counsel placed
23 in the sentencing memorandum in regards to age and aging out
24 of criminal thinking, et cetera. I am going to disregard part
25 of the government's 3553(a) and general arguments in regards

1 to the murders that they believe that Mr. McCray was
2 responsible for in one way or another. He was not -- as he
3 has said, he has not been convicted of a murder. And so, the
4 Court's not going to consider that. They were zealous in
5 their advocacy, and the Court respects that, but it's not
6 going to consider that specifically.

7 I am going to consider the information that they got
8 directly off of the Title III wiretap, in which Mr. McCray is
9 heard talking several times in various wire calls -- I've got
10 them written down: 9914, 2574, 5574 and 5713 -- about the
11 handling, sharing, selling, whatever form they used to
12 distribute amongst each other and Mr. McCray directly,
13 involved in these things called switches, which make guns more
14 dangerous and more lethal. I mean, it's on the wire, it's on
15 the wire; he's talking about it. And apparently that was
16 talked about and corroborated. So, I am going to consider
17 that.

18 His criminal history is lengthy. It is troubling.
19 And he is the author of his own history. There's nothing
20 anybody can do about that, but it is a serious criminal
21 history. And I believe, based on my experience with this
22 case, and having heard testimony, and being very familiar with
23 all of it, that Mr. McCray was the number-one actor in the
24 organization in terms of everything, in terms of the drugs,
25 and in terms of the level of involvement with the switches and

1 the crack cocaine.

2 And I hear what defense counsel has asked for in
3 terms of mercy, and so I am going to give them a little mercy,
4 in that I am going to grant the motion for a variance, based
5 primarily on Mr. McCray's troubling and troubled upbringing
6 and the poor circumstances and dire circumstances that he grew
7 up in. I understand he had a lawn care business that he wants
8 to get back to. Mr. Grammiccioni said that the pandemic had a
9 lot to do with Mr. McCray's involvement in this drug
10 distribution network to make money because of the pandemic.
11 But the Court doesn't really buy that. I think Mr. McCray is
12 an able-bodied man. And this able-bodied man had a business,
13 and he should have just worked harder at a lawful business.
14 And I don't think he should necessarily blame that on the
15 pandemic.

16 So, having calculated and considered the advisory
17 sentencing guidelines -- I'm not going to sentence him based
18 on the Armed Career Criminal Act. That was also something
19 else that I wanted to put on the record.

20 And so, having done that, having calculated and
21 considered the advisory sentencing guidelines, and having also
22 considered the relevant statutory sentencing factors contained
23 in 18 U.S.C., Section 3553(a), it's the judgment of the Court
24 that the defendant, Frederick Wendell McCray, is hereby
25 committed to the custody of the Bureau of Prisons, to be

1 imprisoned for a term of 360 months. Said term consists of
2 300 months as to Counts 1 and 2; 120 months as to Count 4; and
3 48 months as to Counts 16 through 18, 20 through 24 and 26, to
4 run concurrently; and 60 months as to Count 3, to run
5 consecutively to all other counts. It appears he doesn't have
6 the ability to pay a fine, so the fine is waived. But he
7 shall pay the mandatory \$1,300 special assessment fee.

8 Upon release, he shall be placed on supervised
9 release for a term of five years. Said term consists of five
10 years as to each count, 1, 2 and 3; three years as to Count 4;
11 and one year as to Counts 16 through 18, 20 through 24 and 26,
12 to run concurrently. While on supervised release, he shall
13 comply with the mandatory conditions outlined in 3583(d) and
14 Section 5D1.3(a), and the standard discretionary conditions in
15 5D1.3, as noted in paragraphs 143 and 145 of the presentence
16 report, which I have adopted in full into the record.

17 Standard conditions one through nine and 13 serve the
18 purpose of public protection and rehabilitation, pursuant to
19 3553(a)(2)(C) and (D).

20 Conditions 10 and 12 serve the statutory purpose of
21 public protection, pursuant to 3553(a)(2)(C).

22 Condition 11 ensures he doesn't engage in activities
23 that may potentially conflict with the other conditions of
24 supervision that may pose risk to his probation officer. And
25 he shall also comply with the following conditions, for the

1 reasons set forth in the presentence report. And that is, he
2 must submit to substance abuse testing to determine if he's
3 used a prohibitive substance and contribute to the cost of
4 that, not to exceed an amount determined reasonable by the
5 Court's Sliding Scale for Services, and he will cooperate in
6 securing any applicable third-party payment, such as insurance
7 or medicaid. And this is recommended based on his conduct
8 involving controlled substances and his admitted substance
9 abuse history.

10 Any objection to the form?

11 MR. LIETZOW: None from the government, your Honor.
12 At the appropriate time, though, I -- I did neglect to ask you
13 to incorporate the preliminary order of forfeiture. So, just
14 for the purposes of the record, I would ask your Honor to do
15 that.

16 THE COURT: Granted.

17 MR. GRAMMICCIONI: No objections.

18 THE COURT: Okay. Probation, any objection to the
19 form?

20 PROBATION OFFICER: No, your Honor.

21 THE COURT: All right. You have 14 days from the
22 entry of judgment to file a notice of appeal. If you want to
23 appeal and you can't afford a lawyer, the Court will appoint
24 one for you. Thank you.

25 THE DEFENDANT: I understand. So, how much time I

1 get?

2 MR. GRAMMICCIONI: Thirty years.

3 THE DEFENDANT: 360 months?

4 THE COURT: What did he say? I couldn't understand
5 him.

6 MR. GRAMMICCIONI: Your Honor, Mr. McCray was asking
7 what his sentence was. And I was explaining to him that the
8 Court ordered a 360-month sentence, among other conditions.

9 THE COURT: Correct. Thank you.

10 MR. GRAMMICCIONI: Your Honor, before we conclude, is
11 it possible that the Court would entertain a recommendation to
12 the Bureau of Prisons to have Mr. McCray serve his
13 incarceration at a facility within South Carolina?

14 THE COURT: I'll order BOP to have him serve his
15 sentence within South Carolina. I hope BOP will listen.

16 MR. GRAMMICCIONI: Thank you, your Honor.

17 THE COURT: Thank you.

18 * * * * *

19
20 I certify that the foregoing is a correct transcript from
21 the record of proceedings in the above-entitled matter.

22 s/Lisa D. Smith,

4/4/2024

23 Lisa D. Smith, RPR, CRR

Date

24

25